

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 5639 IN THE)	ORDER OF REMAND
NAME OF K&W DAIRY)	TO HEARING OFFICER
)	
_____)	

On December 16, 2002, the Director of the Idaho Department of Water Resources (“IDWR”) issued an order in this matter entitled *Order On Exceptions, Motion For Stay, And To Supplement Record*. The Director issued the order in response to K&W Dairy (“K&W”) filing *Applicant's Exceptions To Preliminary Order On Remand And Order Denying Petition For Reconsideration*; and a *Motion For Stay Of Entry Of Final Order And To Supplement The Administrative Record*.

IDWR’s December 16, 2002 order stayed the entry of a final order in this matter for a period of thirty (30) days for the purpose of allowing K&W to supplement the record with detailed designs and a plan of proposed measures to control odor, and to allow for information to be submitted addressing the adequacy of the odor control measures to be relied upon during the operation of the proposed dairy facility.

In addition, the December 16, 2002 order provided that the existing Protestants in this matter shall have the opportunity to review any supplementary evidence submitted by K&W, and shall have the right to request a hearing for the purpose of cross-examining any witnesses who helped develop the evidence, and shall have the right to provide rebuttal evidence.

On January 15, 2003, K&W filed with IDWR its *Notice of Filing Supplementary Evidence*, which was accompanied by the following additional evidence:

- A. Manure Management Plan prepared by Macedo Mitchell Engineering, dated January 6, 2003, with accompanying appendices;
- B. A letter addressed to “To Whom It May Concern” dated January 8, 2003, signed by Marv Patten, Chief Bureau of Dairying, State of Idaho Department of Agriculture;
- C. Affidavit of Travis Kator, dated January 13, 2003; and
- D. Affidavit of Adrian Boer, dated January 13, 2003.

The Protestants in this matter informed IDWR in writing on January 6, 2003, and January 15, 2003, of their requests for a hearing for the purpose of cross examining any witnesses who may have helped prepare any supplementary evidence submitted on behalf of K&W. Idaho Code § 67-5245(6), addressing the review of preliminary orders, provides that the agency head may either hold additional hearings or remand the matter to a hearing officer for additional hearings.

ORDER

In consideration of the foregoing, the Director orders as follows:

1. This matter is remanded to IDWR Hearing Officer L. Glen Saxton for the purpose of considering the additional evidence identified in K&W’s January 15, 2003 *Notice of Filing Supplementary Evidence*. The evidence considered on remand is limited to evidence addressing the adequacy of the odor control measures to be relied upon during the operation of the proposed dairy facility.
2. The Hearing Officer shall provide the existing Protestants in this matter with a reasonable time period to review the supplementary evidence submitted by K&W.
3. The Hearing Officer shall conduct an additional hearing in this matter for the purpose of allowing the Protestants to cross-examine witnesses who helped develop the supplementary

evidence. The Hearing Officer shall provide both the Protestants and K&W with an opportunity to submit rebuttal evidence relative to the odor at the hearing.

4. Following the additional hearing in this matter, and after consideration of the supplementary evidence submitted, the Hearing Officer shall issue an amended preliminary order on remand, which shall be subject to further review on exceptions before the Director.

Dated this __3rd____ day of February 2003.

____ Signed ____
KARL J. DREHER
Director